

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION**

**JAMES W. AND LISA M.  
BALENTINE,**

**Plaintiffs,**

**v.**

**UNITED STATES OF AMERICA,**

**Defendant**

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**Civil No. \_\_\_\_\_**

**COMPLAINT**

Plaintiff's James W. Balentine and Lisa M. Balentine ("Balentines"), individuals and taxpayers, file this complaint for the recover of federal internal revenue tax pad and collected by the United States of America ("Defendant" or sometimes "IRS"), plus interest thereon according to law, and allege:

**SUMMARY OF ACTION**

1. This is our action for the recovery of \$49,180.00 in federal income taxes, plus interest thereon according to law, being a refund due to taxpayers upon the filing of their individual income tax return for the tax period ending December 31, 2014.

2. The original tax return was due on or before April 15, 2015. Form 4868, Application for an Automatic Extension of Time to File U.S. Individual Income Tax Return was filed on April 14, 2015. The extended filing date established that the tax return was due on or before October 15, 2015.

3. On October 15, 2018, the taxpayers filed their Form 1040, U.S. Individual Income Tax Return within the three-year time period for individuals to file a return and claim a refund.

4. On June 20, 2019, the taxpayers received notice from the IRS denying a tax refund as claimed in filing the tax return for the 2014 tax year. The claim was denied based on “you filed your original tax return more than 3 years after the due date”.

5. The tax due deadline was actually October 15, 2015 as extended by the taxpayer upon filing Form 4868, Application for Automatic Extension. The tax return was filed October 15, 2018, within the three-year period for individuals to file a return and claim a refund.

### **JURISDICTION AND VENUE**

6. Jurisdiction exists under 28 U.S.C. § 1346(a)(1). Venue is proper in this district under 28 U.S.C. § 1402(a).

### **PARTIES**

7. James W. Balentine and Lisa M. Balentine, Plaintiffs, individuals and taxpayers residing in Galveston, Galveston County, Texas. Plaintiffs mailing address is P.O. Box 538, Galveston, TX 77553-0538.

8. The Defendant is the United States of America.

### **CLAIM FOR REFUND**

9. Plaintiffs incorporate by reference the allegations in all other paragraphs of this complaint as if fully set forth in this section.

10. The undersigned attorney has attempted on numerous occasions to request an appeal of the disallowance of claim by the IRS but since May 12, 2020, no correspondence or any other contact has been made by the IRS to discuss or resolve this claim for refund.

11. By virtue of the Defendant’s conduct (by the IRS) in refusing to allow the claim for refund, Defendant became and is now indebted to Plaintiffs in the aggregate amount of at least \$49,180.00 plus interest thereon according to law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that citation be issued and served as provided by law, for judgment for Plaintiff's against Defendant in the amount of \$49,180.00, plus interest thereon according to law; for court cost and attorney's fees and for such other relief to which Plaintiffs may be entitled.

Dated: January 19, 2021.

Respectfully submitted,

**DOYLE LAW FIRM, PLLC**

A handwritten signature in black ink, appearing to read "D. R. Bettison", is written over a horizontal line.

DENNIS R. BETTISON

Attorney at Law

State Bar No. 02268700

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Galveston, Texas 77551

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Facsimile: (409) 744-9786

E-mail: [dbettison@doylelawfirm.net](mailto:dbettison@doylelawfirm.net)

## UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF TEXA ☐JAMES W. and LISA M.  
BALENTINE

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*Plaintiff(s)*

v.

UNITED STATES OF AMERICA

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*Defendant(s)*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* UNITED STATES OF AMERICA  
 c/o RYAN K. PATRICK, UNITED STATES ATTORNEY( or his replacement)  
 SOUTHERN DISTRICT OF TEXAS  
 1000 LOUISIANA , SUITE 2300  
 HOUSTON, TX 77002

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DENNIS R. BETTISON  
 DOYLE LAW FIRM  
 6710 STEWART RD. #300  
 GALVESTON, TX 77510

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

SOUTHERN DISTRICT OF TEXA ☐

JAMES W. and LISA M.  
BALENTINE

*Plaintiff(s)*

v.

UNITED STATES OF AMERICA

*Defendant(s)*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* UNITED STATES OF AMERICA  
c/o INTERNAL REVENUE SERVICE  
1111 CONSTITUTION AVENUE, NW  
WASHINGTON, D.C. 20224

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

DENNIS R. BETTISON  
DOYLE LAW FIRM  
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GALVESTON, TX 77510

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: